Listing of Claims:

1-49. (Cancelled)

50. (Currently Amended) A method for forming an image by a scanning charged particle apparatus, comprising steps of:

~~focusing~~ forming a plurality of two dimensional images each at a different focus height ~~points~~ by detecting particles emitted from a sample using a scanning charged particle beam;

~~evaluating~~ calculating a focus evaluation ~~values~~ value of each pixel on each of the two dimensional images;

for each of a plurality of different image points, selecting a ~~the~~ pixel ~~having~~ having a larger focus evaluation ~~values~~ value than at least one other pixel from among pixels at same coordinates of the two dimensional images; and

synthesizing the selected pixels for each of the plurality of different image points, two dimensionally into a composite image ~~for forming the image of a scanning range of the charged particle beam~~.

51. (Currently Amended) A charged particle beam apparatus comprising:

a charged particle source;

a scanning deflector for scanning a charged particle beam emitted from the charged particle source on a sample;

an objective lens for adjusting a focus of the charged particle beam;

a detector for detecting particles emitted from the sample; and

an image processor for forming an image based on the particles detected by the detector, wherein[[:]] said image ~~processor~~ processor:

memorizes a plurality of two dimensional images ~~on~~ formed at different focus ~~points~~ heights,

for each of a plurality of different image points, selects a pixel having a larger focus evaluation value than at least one other pixel from among pixels at same coordinates of the two dimensional images, and

forms the image by arranging ~~the~~ selected pixels for each of the plurality of different image points two dimensionally.

52. (Currently Amended) A charged particle beam apparatus comprising:

a charged particle source;

a scanning deflector for scanning a charged particle beam emitted from the charged particle source on a sample;

an objective lens for focusing the charged particle beam;

a detector for detecting particles emitted from the sample; and

a controller for adjusting the objective lens, ~~wherein~~ for:

~~said controller~~ adjusting a charged particle beam to a focus and computing a focal depth for an image if taken at that focus; and

shifting focus of the charged particle beam by an amount equal to or less than the computed focal depth ~~calculates a focal depth of the charged particle beam and determines a focus change amount based on the calculated focal depth when the focus of the charged particle beam is changed sequentially~~.

53. (Previously Presented) A charged particle apparatus as claimed in claim 52, wherein said controller calculates said focal depth based on image forming conditions.

54. (Previously Presented) A charged particle apparatus as claimed in claim 53, wherein said image forming conditions include magnification of the image, an acceleration voltage of the charged particle beam, beam resolution, and/or a number of pixels of the image.

55. (Currently Amended) A charged particle apparatus as claimed in claim 52, wherein said controller has an input device for inputting a number of images, and determines [[the]] a focus ~~change~~ shift amount based on said calculated focal depth and the number of images inputted.